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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re Application of :
Evan E. Dussia : DECISION ON PETITION
Application No. 09/616,276 : TO WITHDRAW THE
Filed: July 14, 2000 : HOLDING OF ABANDONMENT
For: COMPUTERIZED METHOD AND SYSTEM
FOR OBTAINING, STORING AND ACCESSING
MEDICAL RECORDS

This is in reply to applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on March 8, 2004.

The petition is DISMISSED.

The application was held abandoned for failure to timely respond to a final Office action mailed June 6, 2003 and a Notice to that effect was mailed February 24, 2004.

Applicant states that a response to the final Office action was originally transmitted by facsimile on August 6, 2003 and that a copy of that response was retransmitted on December 8, 2003 after the examiner inquired as to whether a response had been filed. It appears from the record that the response filed on December 8, 2003 was improperly accorded the earlier filing date and the examiner issued an Advisory action on December 24, 2003 in reply thereto. The examiner had no authority to accept the copy of the amendment since it was a late paper. Such a submission needed to be treated as a petition to withdraw the holding of abandonment. Since the period to reply to the final Office action had already expired, on December 8, 2003 the application was abandoned. Consequently, the Advisory action of December 24, 2003 is hereby vacated.

Any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must provide the following:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and
- (2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512).

While meeting requirement (1) above, the petitions (the submissions of December 8, 2003 and March 8, 2004) fail under requirement (2) to provide a proper statement under 37 CFR 1.8(b)(3) attesting to personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate.

It is unclear why the applicant felt that the response period to the final rejection would be "reset" by the filing of the copy of the lost paper on December 8, 2003, as no such "resetting" was proper then, and none will occur now. So, assuming that the applicant can meet the requirements of 37 CFR 1.8(b)(3), unless the examiner decides to backtrack on the stance taken in the vacated Advisory action and allow the case, the application will remain abandoned. A petition to revive would be the recommended course of action in such a case.

With regards to non-receipt of the Advisory action, it is noted that the address of record does not correspond with the address appearing in the petition. It is further noted that the petition includes a copy of a request filed October 30, 2002 to change the correspondence address. This request was never received. Even if the request was received, it would not have been accepted because applicant failed to check the appropriate box indicating what the new address is. For the purposes of answering this petition, a copy of this response is being mailed to the address in the petition. However, the correspondence address of record remains unchanged and applicant must submit a proper change of address to receive future communications at this address.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."



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SNM/mjz: 5/20/04

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